



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 30, 2003

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-3640

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181880.

The Houston Police Department (the "department") received a request for all offense reports pertaining to six named individuals, and calls for service to a specified address on a particular date. You state that the department has released responsive call slips to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and also encompasses the common-law right of privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United*

States Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning certain named individuals. In this case, we believe that each individual's right to privacy has been implicated. Thus, to the extent the department maintains records where any of the named individuals is a possible suspect, arrestee, or defendant, we conclude that the department must withhold that information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*; *cf.* Gov't Code § 411.082(2) (definition of criminal history record information does not include driving record information).

You claim that a portion of the submitted information is excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

The department must withhold the Texas driver's license and license plate numbers that we have marked under section 552.130. In addition, we note that the submitted documents include a "State ID #." If this number relates to a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document, the department must withhold it under section 552.130. If the number does not relate to such a personal identification document, it may not be withheld under section 552.130.

Finally, we note that the submitted information contains a social security number, which may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and

related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the department should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, to the extent the department maintains records where any of the named individuals is a possible suspect, arrestee, or defendant, the department must withhold that information under common-law privacy as encompassed by section 552.101. The department must withhold the Texas driver's license and license plate numbers that we have marked under section 552.130. To the extent the "State ID #" relates to a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document, the department must withhold it under section 552.130. A social security number may be confidential under federal law. The remaining submitted information must be released to the requestor.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹As our ruling is dispositive, we do not address your remaining arguments.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

Mr. Kuruvilla Oommen - Page 5

CN/jh

Ref: ID# 181880

Enc. Submitted documents

c: R.J. Vargas
3700 North Main
Houston, Texas 77009
(w/o enclosures)